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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/421,963	10/20/1999	KEVIN L. SCHULTZ	5150-36800	4855

7590 10/01/2003

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EXAMINER

VO, TUNG T

ART UNIT	PAPER NUMBER
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2613

DATE MAILED: 10/01/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/421,963

Applicant(s)

SCHULTZ ET AL.

Examiner

Tung T. Vo

Art Unit

2613

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/05/03 has been entered.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Art Unit: 2613

2. Claims 1-5, 13-20, 25 and 26 are rejected under 35 U.S.C. 102(e) as being anticipated by Perry et al. (US 5,903,341) as set forth in previous Office Action, Paper 2, and the discussion follows.

Re claims 1 and 26, Perry discloses a system and its method for acquiring images of variable sized objects the system comprising:

an object detector (the scanning enclosure (12 of fig. 1) and the detection software component (88 of fig. 8) are operable to physically detect the presence of the object moving through the scanning enclosure) for detecting presence of a first object and providing a detection signal to an image sensing device that is a scan-line camera (50 of fig. 5, note the video cameras (50) are triggered by the object software detector (88) to physically detect the presence of the first object and to pass the scan lines that contain information to a video processing software component (90), because the object is on the conveyor that is moving so that the cameras and software detector (50 and 88) are detecting the absence of the first object, see also col. 5, lines 11-19);

the image sensing device is the camera (50) for generating image data corresponding to the first object;

an acquisition device (88 of fig. 5) for initiating storage of the image data corresponding to the first object in response to the image acquisition device detecting the presence of the first object (col. 6, lines 1-23) (note Direct Memory Access (DMA) contained buffers that are used to store the captured image based on the time is set in each buffer);

wherein the acquisition device further comprises an object detector (98 of fig. 5) for detecting the absence of the first object (col. 5, lines 30-62) (note the detector (98) detects the first object that has been passed by, and deactivate the camera (50), End Scanline);

wherein the acquisition device (88 of fig. 5) for discontinuing storage of the image data corresponding to the first object in response to the image acquisition device detecting the absence of the first object by the detection (98 of fig. 5) (note End Scanline).

Response to Arguments

3. Applicant's arguments with respect to claims 1, 16, 18 have been considered but they are not persuasive.

The applicant argued that the Perry reference does not physically detect the presence or absence of an object at all, pages 9 and 10 of the remarks.

The examiner respectfully disagrees with the applicant. It is submitted that the scanning enclosure (12 of fig. 1) and CPU (22 of fig. 1) are operable to detect the object moved by the conveyors (14 and 16 of fig. 1), wherein the scanning enclosure and CPU further comprise the cameras (50 of fig. 5) spaced radially 120 degrees apart by a video acquisition and detect software component (88 of fig. 8) for physically detecting presence of the object being moved by the conveyor (16 of fig. 1), so the Perry reference clearly shows the video acquisition and detect software component combined with the cameras (50 and 88 of fig. 5) to physically detect the presence of the object.

Art Unit: 2613

4. Claim 26 is rejected under 35 U.S.C. 102(e) as being anticipated by Perry et al. (US 5,903,341).

Re claim 26, see analysis in claim 1 as set forth in the previous Office Action, paper No. 2, and the discussion above.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6, 9, 11, 12, 21, 23, and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry et al. ((US 5,903,341) in view of White et al. (US 4,972,494) as set forth in the previous Office Action, Paper No. 2, and the discussion above.

7. Claims 7, 8, 10, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry et al. ((US 5,903,341) in view of White et al. (US 4,972,494) further in view of Miller (US 4,760,270) as set forth in the previous Office Action Paper No. 2, and the discussion above.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the previous Office Action, Paper No. 2 and 5.

Art Unit: 2613

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung T. Vo whose telephone number is (703) 308-5874. The examiner can normally be reached on 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris. Kelley can be reached on (703) 305-4856. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.



**TUNG T. VO
PATENT EXAMINER**

T.VO

Tung T. Vo
Examiner
Art Unit 2613